

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JACOB EDWARD HARRAHILL,

Plaintiff,

vs.

TECUMSEH STATE CORRECTIONAL
INSTITUTION, et al.,

Defendants.

4:21CV3022

**MEMORANDUM
AND ORDER**

In a Memorandum and Order filed on May 26, 2021, the court determined that Plaintiff's Amended Complaint is subject to preservice dismissal for failure to state a claim upon which relief may be granted, but on its own motion gave Plaintiff 30 days to file a second amended complaint. (See Filing 10.) On June 7, 2021, the court received a response from Plaintiff in which he twice states that he has "decided to give up for now." (Filing 11.) The court construes Filing 11 as a motion to dismiss, and will grant the motion by dismissing this case without prejudice. *See* Fed. R. Civ. P. 41(a).

Plaintiff inquires whether the court will "be dismissing the Order of 28 U.S.C. § 1915(b)(2)?" (Filing 11, at 2.) If Plaintiff is asking whether the dismissal of the case will relieve him of the obligation to pay the court's filing fee, the answer is, "No."

Under the Prison Litigation Reform Act, an indigent inmate who files a lawsuit in federal court must pay the \$350.00 filing fee, first by making an initial partial payment and then by sending the remainder of the fee to the court in installments. The method for collecting the filing fee from a prisoner is specifically provided for in 28 U.S.C. § 1915(b). Section 1915(b) is written in mandatory terms ("the prisoner shall be required to pay"), leaving no discretion to the district court to waive an in forma pauperis prisoner's filing fee. Moreover, the Prison Litigation Reform Act makes prisoners responsible for their filing fees the moment the prisoner

brings a civil action or files an appeal, even if the case is dismissed at a later time. *See In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997). In other words, Plaintiff must pay the \$350.00 filing fee so long as he remains a prisoner. There can be no refund for amounts already paid, and installment payments must continue to be made.

IT IS THEREFORE ORDERED:

1. Plaintiff's motion to dismiss (Filing 11) is granted, and this action is dismissed without prejudice.
2. Judgment will be entered by separate document.

Dated this 9th day of June, 2021.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge